IN THE

Supreme Court of the United States

October Term, 1956

No. 385

THE PEOPLES CHURCH OF SAN FERNANDO VALLEY, INC.,
Petitioner,

vs.

COUNTY OF LOS ANGELES, CALIFORNIA; CITY OF LOS ANGELES, CALIFORNIA; H. L. BYRAM, COUNTY TAX COLLECTOR.

Brief of Orange Grove Monthly Meeting of Friends of Pasadena, Amicus Curiae, in Support of Petition for Certiorari.

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I.
INTRODUCTION AND STATEMENT OF THE ISSUES.

Petitioner, Orange Grove Monthly Meeting of Friends of Pasadena, respectfully request the Court's leave to file its Brief, *Amicus Curiae*, in support of the Petition for Certiorari filed in the above-entitled action. Consent of both the Petitioner and the Respondent to the filing of this brief has heretofore been obtained.

The question is whether the California Supreme Court erred in sustaining the validity of Article XX, Section 19, of the California Constitution and of Section 32 of the Revenue and Taxation Code against attack on the grounds

that the enactments infringed freedom of speech and freedom of religion, deprived the Petitioner of equal protection of the laws and deprived it of its property without due process of law, all in violation of the Fourteenth Amendment of the Federal Constitution.

The Orange Grove Monthly Meeting of Friends believe that the legislation is unconstitutional on each and all of these grounds. But in this Brief, as in its Brief *Amicus Curiae* filed in the Court below, the Friends will confine their argument to the unconstitutionality of the legislation predicated upon arbitrary classification in violation of the equal protection clause and upon the deprivation of due process of law by the creation of an arbitrary presumption, the vagueness of the language of the enactments and the lack of any prior notice or opportunity to be heard before being subjected to its penalties.

II.
STATEMENT OF INTEREST.

For over three hundred years the Religious Society of Friends (Quakers) has expressed in words and in action the Friends' belief in equality, simplicity and peace. Friends have ever sought to demonstrate their conviction that Christianity can be a religion of reality and practicality in this world and not merely of contemplation and ceremony while awaiting another. The Friends' constant efforts to foster and preserve religious freedom and individual liberty for all men reflect their faith in practical Christianity.

The Friends' interest in the Petition for Certiorari before this Court is twofold: First, the Friends are concerned for the preservation of personal liberty of our society which they feel is unconstitutionally infringed by the California constitutional provision and statute under attack—a concern based upon experiences of Friends dur-

ing the course of their entire history; and second, the Friends are concerned individually because the application of the legislation to them and their church property has compelled them to pay penalties to the State in the form of taxes, arbitrarily exacted. Under the statute attacked, relief from the penalties only comes from the signing of a loyalty oath. To the Friends, this means that relief will never come under the statute because the Friends cannot subscribe the oath: religious convictions of the Friends have forbidden their taking oaths for three hundred years.

The Friends' refusal to take oaths stems from ethical and religious convictions: swearing is contrary to Christ's mandate as stated in the Bible,[1] and even more important to them, swearing acknowledges a double standard of truth, whereas Quakerism will support but one—truth always.[2]

For this social testimony alone, Quakers have undergone great suffering: they have been imprisoned, lost all their property, their homelands, and have suffered death for their refusal to swear.

The Quakers' struggle with oaths began virtually at the birth of the Society in the Middle of the Seventeenth Century. England at that time was in political and religious turmoil. The authority of the Established Church was challenged by the nonconformists; both the Church and the Crown were threatened with real and imagined attempts to restore the Catholic faith as the State religion. Fear and insecurity led to the passage of many statutes designed to stamp out opposition to the Established Church

[1] Quakers rely on the words, "Swear not at all." (Matt. 5:34) and "But above all things, my brethern, swear not." (James 5:12).

[2] William Penn phrased the principle in his epigram, "We dare not swear, because we dare not lie."

and to secure political adherence to the persons then in power.[3] Among the statutes passed were those severly punishing refusal to take a variety of oaths; early loyalty oath statutes were revived and applied with renewed zeal.[4] Not content with catching Quakers in the broader nets, a statute was enacted specifically to persecute Quakers. The Quaker Act of 1662 (15 Car. II, c. 1) punished by fine, imprisonment or banishment any person maintaining "that the taking of an oath in any case whatsoever . . . is altogether unlawful and contrary to the word of God" and wilfully refusing an oath or endeavoring to persuade others to refuse an oath.

The Quakers fought persecution, intolerance and oath taking with traditional Quaker weapons: endurance, passive resistance, patience and work—in prison, in Parliament, in courts of law, in the press, and in pleas and petitions to the State. That campaign was ultimately successful: the old statutes were repealed, amended, or simply allowed to atrophy.

Unfortunately this chronicle did not end in Seventeenth Century England. The same cycle has been repeated again and again. Persecution, intolerance and loyalty oaths reappeared in the New World, first during the Colonial era, and later following the American Revolution when the uneasy new country sought reinforcement by imposing test oaths abjuring the King and declaring allegiance to the new government. The device was revived following the

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[3]Some of the statutes operated directly to punish nonconformists, such as the Conventicle Acts of 1664 and 1670; some enacted more oaths; some punished the failure to take oaths; still others were enacted to apply to other situations but were used to effect further persecution, such as the statutes punishing vagrancy and disturbance of the peace.

[4]*E. g.*, Stats. 5 Eliz., c. 1; 7 Jac. 1, c. 6; 16 Rich. II, c. 2, 5.

Civil War. Today this country is once more faced with both real and imagined threats to its internal security. Loyalty oaths have been rediscovered, have proliferated and penetrated the country in a great variety of forms. The causes to be sustained by requiring oaths have changed over the years, but the Quakers' refusal to swear and the reasons for their position have remained unchanged and unmodified over the centuries.

The Friends' persistent refusal to take oaths has been matched by their persistent refusal to resort to violence. Throughout their history, Friends have endeavored to alleviate the suffering caused by wars through relief work and to prevent renewed conflicts by seeking to reduce the causes of war. Their refusal to engage in war has never been engendered by personal fear of hardship or by reason of adherence to any political philosophies or theories: their objections to taking up arms are based upon their religious convictions. The entire history of the Society of Friends and the lives of its members testify that the overthrow of the government by force and violence would be to them unthinkable.

The oath provisions are not only vice of the legislation which this Court is urged to consider; and those provisions are not the exclusive basis of the Friends' interest. The statute alone (California Revenue and Taxation Code Sec. 32) utilizes the venerable loyalty oath device, but it is merely the spawn of the constitutional provision (Art. XX, Sec. 19). Fundamental and searching questions are raised by the constitutional provision in issue. Aside from the grave questions of civil liberties posed by Article XX, Section 19, the article, as interpreted and upheld by the California Supreme Court, violates the guaranties of equal protection of the laws and due process of law of the Federal Constitution by establishing wholly arbitrary classifi-

cations. The Friends believe that the preservation of liberty depends not alone upon assurance of freedom of speech, religion and assembly, but also upon the guarantee of freedom from arbitrary state action in purported exercise of police and taxing powers. If the State may with impunity deprive the individual of his property by capricious and oppressive classifications, tyranny becomes a reality and constitutional government an empty form.

III.
ARGUMENT.

Article XX, Section 19 of the California Constitution and Revenue and Taxation Code, Section 32, violate the Fourteenth Amendment of the Federal Constitution by creating wholly arbitrary classifications and by depriving those persons and organizations so classified of their property without due process of law.

The State's broad power to select the objects of taxation or regulation and to classify those objects is limited by the equal protection clause of the Federal Constitution in at least two respects: first, there must be some identifiable and reasonable difference between the persons or things put into one class and the persons or things put into another, and second, the difference which is the basis of classification must have some reasonable relation to a legitimate legislative purpose.[5]

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[5]The constitutional limitations of the equal protection clause are applicable to statutes enacted in exercise of the taxing power. *E. g., Louisville Gas & E. Co. v. Coleman*, 277 U. S. 32, 37 (1927); *Concordia Fire Ins. Co. v. Illinois*, 292 U. S. 535 (1934); *Air-Way Electric Appliance Corp. v. Day*, 266 U. S. 71 (1924). The same constitutional limitations apply to legislation enacted in exercise of the police power. *E. g., Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 560 (1901); *Truax v. Corrigan*, 257 U. S. 312 (1921); *Takahashi v. Fish & Game Commission*, 334 U. S. 410 (1948).

There are two sources of state power which may be invoked to support the enactment of the legislation in issue: the police power and the taxing power. If the legislative purpose in compelling an exaction is the raising of revenue for public purposes, the legislation imposes a tax and its constitutionality should be tested with reference to that purpose. If the legislative purpose is the regulation of persons or activities, the exaction compelled is not a tax (regardless of its label), but is in the nature of a penalty, and its constitutionality should be tested with reference to that purpose.[6]

A. The Classification Made by the Legislation in Issue Is Unconstitutional as an Exercise of the Taxing Power.

(1) The Legislation Imposes a Tax.

If the measures are considered as exercises of the taxing power, the provisions are in their nature taxing, rather than exemption provisions. Article XX, Section 19 does not relieve from taxation; it imposes a tax upon property of all persons and organizations within its ambit which was not previously taxed. In terms it has no application to property which was taxable.

In this case the property in issue was used solely and exclusively for religious worship owned by a church. There is no indication that the property was used for any

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[6] As Professor Freund states in Freund, *Police Power*, §20, p. 21: "The sanction of a law passed in exercise of the police power is usually a penalty and the violation of the law constitutes technically a crime. . . ." This Court has frequently recognized that an exaction labeled a "tax" may be in reality a penalty; the characterization of the exaction is, of course, critical in federal legislation since the Federal Government does not possess the police power. See *United States v. La Franca*, 282 U. S. 568, 572 (1931); *United States v. Chanteau*, 102 U. S. 603.

other purpose which was tax exempt.[7] If the property had been used for any non-tax exempt purpose, the legislation in question would be entirely immaterial.

(2) The Classification Is Arbitrary.

In testing the validity of taxing measures, the classes created must be identified and the distinction among the classes must be analyzed to determine whether the difference, which is the basis of classification, has any relationship to the legislative purpose of raising revenue.

The first step is the determination of the object of the tax: what is being taxed? The object of a tax may be a person (*e.g.*, a head or poll tax), a privilege (*e.g.*, corporate franchise), or real or personal property. The legislation in issue purports to tax property; the object of the law is the property itself. It is not the person or persons who own the property. Therefore the difference in treatment for tax purposes should be based upon some real difference in the property taxed: there is no rational distinction between the property taxed and the property not taxed in the classification created by the legislation attacked. The classification is not based upon any distinction relating to the tax object—the nature, value, extent, location, or any other characteristic of the prop-

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[7]The property was tax exempt by reason of the provisions of Article XIII, Section 1½ of the California Constitution; other provisions of the Constitution exempt property used for other specified purposes, including property used for growing crops, colleges, orphanages, free public museums and libraries, public schools, hospitals and certain other charitable purposes if owned by qualifying nonprofit organizations. None of these provisions has any application to the case at bar.

erty; it is based solely upon a selected personal characteristic of the person or organization owning the property.

For example, assume that Church *A* owns real property used solely and exclusively for religious worship; Church *A* does not advocate. Church *B* owns real property used for the same purpose which is in all respects identical with that of Church *A;* Church *B's* property is taxed. Yet the object of taxation is identical; the property is placed in separate classes for tax purposes solely because of the views of the owners of the property.

On the other hand, if we assume that the object of the tax is the person or organization owning the property, the classification made is no more rational than that previously mentioned.

The classification does not depend alone upon advocacy or non-advocacy, or upon ownership or non-ownership of property subject to tax. The statute creates a new class based not upon advocacy, not upon property ownership, not upon the nature of the property owned, but upon the predisposition of the persons, or some of them, who own the property, to sign an oath. The connection between refusal or willingness to sign an oath and the raising or protection of the public revenue is not simply tenuous—it is nonexistent.

B. The Classification Is Arbitrary as an Exercise of Police Power.

The state may properly select those persons and activities it wishes to regulate and may classify them to further the public health, safety and welfare. That the state may legitimately act to prevent its overthrow by force and violence is not here questioned. But the basis of the classification must have some rational connection to the end to be achieved.

The legislation in issue was apparently designed to penalize persons and organizations which the state conceived to threaten its internal security. It is a punitive measure. Its character can easily be ascertained by reframing the language of the constitutional amendment in terms which reach precisely the same result: *Any person or organization which advocates shall be subject to a penalty measured by the amount of any tax exemption heretofore granted to such person or organization.*

The constitutional amendment penalizes all persons or organizations which advocate and which own property subject to tax; it does not penalize all persons or organizations which advocate but which do not own property subject to tax (or property formerly tax exempt). Upon all persons situated in the first class there is imposed a penalty measured by the value of taxable property owned (or, in other words, measured by the amount of any pre-existing tax exemption). No penalty is imposed upon members of the latter class.

This classification is based upon a mere difference which has no relationship to the legislative end. The activities

or conduct of the persons or organizations in either class may be identical; indeed, the activities of organizations which do not own tax exempt or taxable property may be more culpable and more dangerous than those of the penalized class.

Not only is the classification arbitrary but the penalty is equally arbitrary. The magnitude of the penalty does not depend upon or have any relation to the character of the activity or conduct penalized nor upon any personal characteristic of the offender related to the offense. The size of the penalty is fixed solely by the fortuitous circumstance of the amount of a tax exemption which the offender might have!

The classifications added by the statute are even more fanciful than those created by the constitutional amendment. In the statute, the imposition of the penalty does not even depend upon advocacy, but only upon willingness to sign an oath. It is idle to say that the imposition of the penalty depends upon advocacy: this may be what the legislators had in mind, but that is not what the statute provides. An organization may prove beyond a reasonable doubt that it does not advocate, but, if it has not signed the oath, it has not complied with statutory prerequisites and its proof is fruitless. The statute expressly forbids receipt of any exemption in the absence of a signed declaration.

The statute gives more favorable treatment to one who does advocate, but who falsely signs the oath. The statute does not penalize his advocacy. Nothing in the

statute states that the fact of advocacy deprives the individual of his tax exemption. The constitutional amendment so provides, but there is no machinery for its enforcement: it is simply an enabling act. The false signer may be prosecuted for his false swearing, but in that hearing, presumably, he would have the benefit of the presumption of innocence and the burden would be upon the state to prove guilt beyond a reasonable doubt. As the statute presently stands, therefore, the person who has no compunctions either about overthrowing the government or about swearing falsely still receives his tax exemption and retains a presumption of innocence, while the individual who does not advocate, but refuses to swear that he does not, is deprived of both.

The effect of the statute is to create a conclusive presumption of a guilt of a crime (advocacy of violent overthrow of the government) solely from refusal to sign the oath. Any other reason for refusal to sign is by statute made immaterial.[8]

C. The Legislation Deprives the Prescribed Classes of Their Property Without Due Process of Law.

The enactments impose penalties upon the persons and organizations within ambits, without any ascertainable

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[8]The creation of a conclusive presumption of advocacy merely from refusal to sign an oath is a deprivation of due process of law. The presumption is obviously arbitrary where it is applied to the Quakers whose refusal stems from religious convictions and is completely unrelated to advocacy. *Cf. Heiner v. Donnan*, 285 U. S. 312 (1931); *United States v. Tot*, 319 U. S. 463 (1943); *Adler v. Board of Education*, 342 U. S. 485, (1951).

standard for determining who is within and who is without their terms. The legislation penalizes not only advocacy of violent overthrow of the government, but also advocacy of "support of a foreign government against the United States in event of hostilities." The former phrase has been difficult to define, but the latter defies definition. All that can be done is to speculate upon the possibilities of its meaning. For instance, is the Friends' relief program to the victims of war, the children of countries which are hostile to the United States, condemned? The terms are unconstitutionally vague.[9]

The enactments may be searched in vain for any provisions permitting any prior notice or any opportunity whatsoever to be heard. The oath and the oath alone is made the substitute for the most elementary concepts of due process.[10]

IV.
CONCLUSION.

The Friends earnestly urge the Court to grant certiorari to review this case.

The decision of the issues raised affect not only your Petitioner, the Friends and all other persons and organi-

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[9] Due process requires that a statute must be framed in terms which are sufficiently clear to permit persons of ordinary intelligence to understand who is within the scope of the act, and, in a penal statute, to permit ascertainment of some statutory standard of guilt. *E. g., Lanzetta v. New Jersey*, 306 U. S. 451, 453 (1939); *Connally v. General Construction Co.*, 269 U. S. 385 (1926); *Stromberg v. California*, 283 U. S. 359 (1930).

[10] *Cf. Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123 (1951); *Adler v. Board of Education*, 342 U. S. 485 (1951).

zations with tax exempt status in California, but the issues also affect people throughout the country where legislation of similar import has been proposed or has already been enacted.

Respectfully submitted,

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